

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

May 05, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JASON C. YOUKER,

Defendant.

NO: 2:14-CR-152-RMP-1

ORDER DENYING DEFENDANT'S  
CONSTRUED, POST-REMAND  
MOTION FOR COMPASSIONATE  
RELEASE UNDER 18 U.S.C. §  
3582(c)(1)(A)

BEFORE THE COURT is Defendant Jason Youker's renewed, post-remand *pro se* Motion for Compassionate Release under 18 U.S.C. §3582(c)(1)(A)(i). ECF Nos. 771 (original motion) and 801 (supplemental initial brief on remand). Having reviewed the original Motion, ECF No. 771; Defendant's Supplement, ECF No. 801; the Government's Response, ECF No. 804, and sealed exhibit, ECF No. 808<sup>1</sup>; and

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<sup>1</sup> This exhibit was sealed to protect Defendant's health records from public disclosure. *See* ECF No. 807 (text order granting the Government's Motion to Seal upon good cause shown).

1 Defendant's Reply, ECF No. 813; the remaining record; and the relevant law; the  
2 Court is fully informed. After considering the applicable factors provided in 18  
3 U.S.C. § 3553(a) and the applicable policy statements issued by the United States  
4 Sentencing Commission ("USSC"), the Court finds that compassionate release is not  
5 based warranted on Mr. Youker's circumstances.

### 6 **BACKGROUND**

7 On December 15, 2016, a jury found Mr. Youker guilty of 32 counts relating to  
8 the distribution of controlled substances and unlawful possession of firearms and  
9 ammunition. ECF No. 501. Mr. Youker's total offense level of 40 and criminal  
10 history category of III resulted in an advisory United States Sentencing Guidelines  
11 ("USSG") range of 360 months to life. *See* ECF No. 629 at 36–37. On May 24,  
12 2016, Mr. Youker received a sentence of: 20 years of incarceration for Counts 1  
13 through 9; 10 years for Counts 10 and 11; and 96 months for Counts 14 through 21  
14 and 23 through 35; with all sentences running concurrently. ECF No. 583. The  
15 sentencing judge determined that a twenty-year mandatory minimum term applied to  
16 Counts 1, 8, and 9. *See* 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(viii), 846, and 851.

17 At sentencing, the Government advocated for a sentence within the USSG  
18 range, and further argued that, if the Court were inclined to mitigate Mr. Youker's  
19 sentence, a sentence of 328 months of incarceration would be appropriate because it  
20 would fall in the middle of a downward-adjusted USSG range. ECF No. 629 at 21–  
21

22. The Court presiding over sentencing<sup>2</sup> indicated that it had thought “very seriously” about imposing a USSG sentence. *Id.* at 28–29. Ultimately, the Court followed the recommendation of Defendant, through counsel, and imposed the 240-month sentence as a downward variance from the USSG range. *Id.* at 39.

Mr. Youker, acting pro se, initially moved for compassionate release on July 13, 2020, seeking relief from the threat posed to him by the COVID-19 pandemic while incarcerated. ECF No. 752 at 1. This Court found that Mr. Youker failed to exhaust his administrative remedies and denied his Motion for Compassionate Release without prejudice on September 1, 2020. ECF No. 767.

On October 19, 2020, Defendant filed a Motion for Reconsideration, which this Court construed as a Renewed Motion for Compassionate Release pursuant to 18 U.S.C. § 3582(c)(1)(A). ECF No. 771. The Court deferred briefing of the Motion to allow Mr. Youker the chance for the Federal Defenders of Eastern Washington to screen his Motion. ECF No. 773. The Federal Defenders office completed its screening and withdrew from further representation. ECF No. 791. With the Court’s permission, Mr. Youker filed a supplemental brief on his own behalf on March 5, 2021. ECF Nos. 788 and 790.

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<sup>2</sup> This case was reassigned to the undersigned in February 2020 after Judge Salvador Mendoza, Jr. entered an Order of Recusal. ECF Nos. 738 and 739.

1           On March 29, 2021, this Court denied Mr. Youker’s Renewed Motion for  
2 Compassionate Release. ECF No. 791. The Court noted that Mr. Youker has no  
3 health condition or personal characteristic, or any combination thereof, that  
4 predisposes him to complications from contracting the novel coronavirus, and Mr.  
5 Youker already had recovered from the virus in December 2020. *Id.* The Court also  
6 rejected that the presence of the COVID-19 in United States Bureau of Prisons  
7 facilities is “in and of itself . . . an extraordinary and compelling reason to warrant  
8 compassionate release under 18 U.S.C. § 3582(c), because COVID-19 affects  
9 nonincarcerated individuals as well as incarcerated ones.” *Id.* at 7. This Court  
10 proceeded to assess the sentencing factors under 18 U.S.C. § 3553(a) and found that  
11 they further weighed against compassionate release for Mr. Youker. *Id.* at 8–9. In  
12 addition, the Court found insufficient support to conclude that Defendant was no  
13 longer a danger to the community. *Id.* at 9.

14           In issuing the March 29, 2021 Order, this Court noted that the USSG policy  
15 statement applying to compassionate release requests, USSG § 1B1.13, had not “been  
16 updated since enactment of the First Step Act,” which allows a federal prisoner to  
17 seek a sentence reduction and compassionate release on his own behalf. ECF No.  
18 791 at 5. However, the Court also reported in the conclusion of the Order that it had  
19 “considered all of the factors required by USSG § 1B1.13, as well as those set forth  
20 in 18 U.S.C. § 3553(a) . . . .” *Id.* at 9.

1 After the Court issued its March 29, 2021 Order, but before Mr. Youker  
2 appealed the Order on April 29, 2021, the United States Court of Appeals for the  
3 Ninth Circuit decided *United States v. Aruda*, 993 F.3d 797 (9th Cir. 2021). The  
4 Ninth Circuit held that the current version of USSG § 1B1.13 is not binding as  
5 applied to compassionate release motions. *Aruda*, 993 F.3d at 802. On motion from  
6 the Government, the Ninth Circuit remanded Defendant’s appeal to this Court to  
7 consider Defendant’s Motion for Compassionate release in light of *Aruda*. ECF Nos.  
8 798 (Slip Opinion) and 800 (Mandate).

9 Defendant is 48 years old and currently is incarcerated at Federal Correctional  
10 Institution—Englewood (FCI-Englewood) in Littleton, Colorado. United States  
11 Bureau of Prisons (“BOP”) records indicate that Defendant’s anticipated release date  
12 is October 3, 2031.

### 13 LEGAL STANDARD

14 A court may reduce a term of imprisonment on compassionate release grounds  
15 after considering the factors under 18 U.S.C. § 3553(a), to the extent that they are  
16 applicable, and upon a finding that “extraordinary and compelling reasons warrant  
17 such a reduction.” 18 U.S.C. § 3582(c)(1)(A). The reduction also must be  
18 “consistent with applicable policy statements issued by the Sentencing  
19 Commission.” *Id.*

20 The U.S. Sentencing Commission has issued a policy statement recognizing  
21 certain circumstances as “extraordinary and compelling reasons” for purposes of

1 compassionate release, so long as “the defendant is not a danger to the safety of any  
2 other person or to the community, as provided in 18 U.S.C. § 3142(g)”:

3 (A) Medical Condition of the Defendant.—

4 (i) The Defendant is suffering from a terminal illness (i.e., a serious physical and advanced illness with an end of life trajectory) . . . .

5 (ii) The defendant is—

6 (I) suffering from a serious physical or medical condition,

7 (II) suffering from a serious functional or cognitive impairment, or

8 (III) experiencing deteriorating physical or mental health because of the aging process, that ‘substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

11 (B) Age of the Defendant.—The defendant (i) is at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

14 (C) Family Circumstances—

15 (i) The death or incapacitation of the caregiver of the defendant’s minor child or minor children.

16 (ii) The incapacitation of the defendant’s spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

18 (D) Other Reasons—As determined by the Director of the Bureau of Prisons, there exists in the defendant’s case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

21 U.S. Sentencing Guidelines Manual (“USSG”) § 1B1.13 cmt. n.1.



1 ECF No. 791 at 6–9. Moreover, in the post-remand submissions from the  
2 Government, the Court has learned that while Defendant was seeking release based  
3 on an argument that FCI-Englewood offered inadequate protection to inmates  
4 COVID-19, Defendant also declined to receive a COVID-19 vaccination from BOP.  
5 *See* ECF No. 804 at 9, n. 5. Looking to USSG § 1B1.13 for non-binding guidance,  
6 the Court finds no basis to depart from its previous conclusion that Defendant has  
7 not shown that he has any health condition(s) or other personal characteristic(s) that  
8 amount to an extraordinary and compelling reason for reduction of his sentence due  
9 to COVID-19. ECF No. 791 at 7.

10 ***Section 3553(a)***

11 On remand, Defendant argues that the Court should consider that he could or  
12 should have received Safety Valve relief and should not have been subject to the  
13 twenty-year mandatory minimum for three of his counts of conviction. ECF Nos.  
14 801 at 2; 813 at 2–5. First, Defendant argues that “[d]uring sentencing the  
15 Defendant was denied the Safety Valve by the Court and attorneys representing due  
16 to incorrect quailifying [sic] factors, using only criminal history points to disqualify  
17 the defendant.” ECF No. 801 at 2. Defendant also maintains that his prior state  
18 offenses would no longer qualify as predicate offenses for purposes of a twenty-year  
19 mandatory minimum if he were sentenced after the enactment of the First Step Act  
20 because they were not “punishable by at least ten years” as Defendant contends is  
21 required by the narrower “serious drug felony” category versus the “felony drug

1 offense” category that was in effect at the time that he was sentenced. ECF No. 813  
2 at 3 (citing *United States v. Williams*, No. 20-30201, 2021 U.S. App. LEXIS 21105  
3 (9th Cir. July 16, 2021)); *United States v. Valencia-Mendoza*, 912 F.3d 1215 (9th  
4 Cir. 2018)). Defendant argues that the mandatory guideline range for his predicate  
5 prior “felony drug offense” was only 102 months, less than ten years. *Id.*

6 Defendant also argues that he was “taxed” for exercising his right to proceed  
7 to trial after rejected a 15-year term of incarceration plea offer from the Government,  
8 and that a sentence reduction is warranted to address a disparity between the  
9 sentence that he received and the sentences given to his co-defendants. ECF Nos.  
10 801 at 3–4; 813 at 5–7.

11 The Government responds that, “even without regard to Defendant’s criminal  
12 history points, Defendant was an organizer/leader under USSG §3B1.1(c), possessed  
13 multiple firearms in connection with the offense, and failed to provide the  
14 government with any information or evidence about the offense.” ECF No. 804 at 9.  
15 The Government argues that these facts disqualified Defendant from Safety Valve  
16 relief at sentencing and remain disqualifying after the First Step Act. *Id.* at 9–10.

17 As to the application of a mandatory minimum sentence for Counts 1, 8, and  
18 9, based on a prior “felony drug offense,” the Government argues that Defendant  
19 would not be entitled to retroactive application of the changes to predicate offenses  
20 for the mandatory minimum penalty under 21 U.S.C. § 851, nor does Defendant  
21 maintain as much. ECF No. 804 at 11, n. 6 (citing *United States v. Kelley*, 962 F.3d

1 470 (9th Cir. 2020)). The Government further argues that even if the twenty-year  
2 mandatory minimum had not been applied at Defendant's sentencing, Defendant's  
3 USSG range would have remained 360 months to life, and a twenty-year sentence  
4 would still have been ten years (or one-third) below the low end of that range. *Id.* at  
5 11–12.

6 With respect to Defendant's allegation of a disparity between his sentence and  
7 his co-defendants', the Government argues that his co-defendants received reduced  
8 sentences because they had reduced roles in the offense, cooperated with the  
9 Government, and testified against Defendant at trial. ECF No. 804 at 10–11. The  
10 Government argues that Defendant's sentence achieves the goals of the section  
11 3553(a) sentencing factors, which "weigh heavily" against reducing Defendant's  
12 sentence. ECF No. 804 at 13–16. The Government cites the Presentence  
13 Investigation Report as support for the seriousness of Defendant's offenses,  
14 including attempting to "create a police-free compound" for the distribution of  
15 controlled substances, complete with a rock barricade and sentry posts, and outfitted  
16 with ammunition and firearms, including two that had been stolen. ECF No. 804 at  
17 2–3, n. 2. The Government also recites Defendant's history of criminal convictions  
18 dating back to age fifteen and including violent offenses such as burglary involving  
19 holding the victim at gunpoint and "Delivery of a Controlled Substance or  
20 Possession of a Controlled Substance with Intent to Deliver, including one in which  
21

1 Defendant was armed with a deadly weapon and was accompanied by his 17-month  
2 old son[.]” *Id.* at 15.

3 The Ninth Circuit has noted in the context of a motion for reduction of  
4 sentence under section 3582(c)(2) that “[s]ubsequent developments affecting a  
5 mandatory minimum are relevant . . . to the ‘nature and circumstances of the  
6 offense,’ the ‘seriousness of the offense,’ the needs ‘to provide just punishment for  
7 the offense,’ and ‘to afford adequate deterrence to criminal conduct.’” *United States*  
8 *v. Lizarraras-Chacon*, No. 20-30001, 2021 U.S. App. LEXIS 28823, at \*13 (9th Cir.  
9 Sep. 23, 2021) (citing 18 U.S.C. § 3553(a)(1), (2)(A)-(B)). Therefore, consistent  
10 with the precedent set by *Lizarraras-Chacon*, it is appropriate to consider  
11 subsequent legal developments at the second step of the section 3582(c)(1)(A)(1)  
12 analysis, when the Court considers the section 3553(a) sentencing factors. *Accord*  
13 *United States v. Roper*, No. CR12-5085 BHS, 2022 U.S. Dist. LEXIS 15273, at \*17  
14 (W.D. Wash. Jan. 27, 2022). Subsequent legislative and judicial developments are  
15 not considered extraordinary and compelling reasons. *See id.*

16 Having found that Defendant has not met his burden of presenting  
17 extraordinary and compelling reasons justifying compassionate release under section  
18 3582(c)(1)(A)(i), the Court need not consider the section 3553(a) factors. *See* 18  
19 U.S.C. § 3582(c)(1)(A). Nevertheless, the Court acknowledges that the parties have  
20 discussed the section 3553(a) factors at length in their briefing, and Defendant  
21 contends that the intervening legal developments undermine whether he received a

1 just and fair sentence. *See* ECF Nos. 801, 804, and 813. Therefore, the Court  
2 examines whether the section 3553(a) factors support Defendant’s request for relief,  
3 were they to control the outcome of Defendant’s Motion for Compassionate Release.

#### 4 Consideration of Legal Developments

5 As discussed in prior orders on this docket, at the time that Defendant was  
6 sentenced for the instant offenses, a previous conviction for a “felony drug offense”  
7 triggered a mandatory minimum sentence of twenty years. *See* ECF No. 693 at 17  
8 (citing 21 U.S.C. §§ 802(17)(c), (44), 851(e), and 841(b)(1)(A)(viii). A “felony  
9 drug offense” means an offense that is punishable by imprisonment for more than  
10 one year that prohibits or restricts conduct relating to controlled substances. 21  
11 U.S.C. § 802(44).

12 However, pursuant to the First Step Act of 2018, a prior offense “triggers a  
13 mandatory minimum sentence only if it was for a ‘serious drug felony,’ as opposed  
14 to any ‘felony drug offense.’” *United States v. Asuncion*, 974 F.3d 929, 931 (9th  
15 Cir. 2020) (citing Pub. L. No. 115-391, § 401(a)(2), amending 21 U.S.C. §  
16 841(b)(1)). “The term ‘serious drug felony’ means an offense described in section  
17 924(e)(2) of Title 18 for which—(A) the offender served a term of imprisonment of  
18 more than 12 months; and (B) the offender's release from any term of imprisonment  
19 was within 15 years of the commencement of the instant offense.” 21 U.S.C. §  
20 802(57); *see also* 18 U.S.C. § 924(e)(2)(A)(ii) (including offenses under state law  
21 involving distributing or possessing with intent to distribute controlled substances).

1 “In addition, Section 401 of the First Step Act reduces the length of the mandatory  
2 minimum sentences triggered by prior drug offenses. . . . The minimum for  
3 defendants with one prior conviction is now fifteen years rather than 20.” *Asuncion*,  
4 974 F.3d at 931 (citing § 401(a)(2)(A)(i), 132 Stat. at 5220).

5 Defendant was convicted in Washington State in 1998 for possessing a  
6 controlled substance with intent to manufacture or deliver cocaine. ECF No. 693 at  
7 15. The statutory maximum sentence was ten years of incarceration and the standard  
8 sentence range was 77 to 102 months. *Id.* at 15–16. Defendant initially received a  
9 sentence of 77 months, but, in July 2003, a state court entered a *nunc pro tunc* order  
10 amending Defendant’s judgment and sentence to correct his criminal history and  
11 resentence him to 67 months of incarceration. *Id.* Although Defendant’s term of  
12 incarceration was interrupted by Defendant’s escape from custody in May 1999,  
13 Defendant was returned to Washington State custody in September 1999, convicted  
14 of second-degree escape, and did not release from custody for the controlled  
15 substance and the escape offenses until January 5, 2004. *See id.*

16 Washington State revised its sentencing scheme in 2005 as a result of *Blakely*  
17 *v. Washington*<sup>4</sup> to confine a trial judge’s authority to impose a sentence beyond the  
18 standard range. *See* Laws of 2005, ch. 68, § 1; Revised Code of Washington  
19 (“RCW”) § 9.94A.535. Prior to 2005, the Washington State sentencing scheme gave

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20 <sup>4</sup> 542 U.S. 296 (2004).  
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1 trial judges more discretion to impose an exceptional sentence. *See State v. Hall*,  
2 Nos. 54615-5-I, 54782-8-I), 2005 Wash. App. LEXIS 2117, at \*10 (Ct. App. Aug.  
3 22, 2005) (recounting that former RCW § 9.94A.535 stated that its list of  
4 aggravating circumstances was “illustrative only and . . . not intended to be  
5 exclusive reasons for exceptional sentences.”).

6 In *Valencia-Mendoza*, the Ninth Circuit concluded that Valencia-Mendoza’s  
7 Washington State conviction was not for a crime punishable by imprisonment by  
8 more than one year. 912 F.3d at 1223. The Ninth Circuit reached this conclusion by  
9 determining that while the statutory maximum penalty for the state offense exceeded  
10 one year, under the sentencing guideline system in place at the time of Valencia-  
11 Mendoza’s conviction, the mandatory standard range called for a sentence of six  
12 months or less. *Id.* The Ninth Circuit has distinguished *Valencia-Mendoza* when  
13 examining whether sentences under Washington’s pre-2005 sentencing scheme,  
14 such as Defendant’s 1998 conviction for possession of a controlled substance with  
15 intent to manufacture or deliver cocaine, qualify as a predicate offense. *See*  
16 *Asuncion*, 974 F.3d at 933–34.

17 As a result of this caselaw, Defendant’s reliance on *Valencia-Mendoza* is  
18 confounding to the Court, as the record indicates that Defendant was sentenced to 67  
19 months of incarceration for the 1998 offense and, as far as the Court can determine,  
20 served more than one year. *See* ECF No. 693 at 15–16. Therefore, that conviction  
21 qualifies as a “felony drug offense” and also meets the first prong of the “serious

1 drug felony.” *See* 21 U.S.C. § 802(57)(A). In addition, Defendant’s January 5,  
2 2004 release date for his 1998 controlled substances offense falls within fifteen years  
3 of Defendant’s commencement of the instant offenses. Therefore, the First Step  
4 Act’s amendments do not affect whether Defendant’s 1998 controlled substances  
5 conviction would qualify as a predicate offense for a minimum mandatory sentence  
6 above ten years. However, Defendant is correct that the enhanced mandatory  
7 minimum applicable to him were he to be sentenced today appears to be fifteen,  
8 rather than twenty, years. *See* First Step Act of 2018 at § 401(c) (providing that its  
9 amendments do not apply to sentences imposed before December 21, 2018).

10 While a five-year difference in the applicable mandatory minimum term is  
11 significant, the record does not persuade the Court that a fifteen-year sentence was  
12 likely in the absence of the twenty-year mandatory minimum, as the sentencing  
13 Court already varied downward by a full ten years from the low end of the USSG  
14 range to sentence Defendant to twenty years for Counts 1 through 9. *See* ECF No.  
15 583. In addition, the twenty-year mandatory minimum applied to only three of those  
16 counts. Therefore, the Court does not find that the amendments enacted by the First  
17 Step Act significantly alter the analysis of what sentence is warranted considering  
18 the ‘nature and circumstances of the offense,’ the ‘seriousness of the offense,’ [and]  
19 the needs ‘to provide just punishment for the offense,’ and ‘to afford adequate  
20 deterrence to criminal conduct.” *See Lizarraras-Chacon*, 14 F.4th at 967.

1 With respect to Defendant's argument that he was erroneously deprived of  
2 Safety Valve relief, an argument that Defendant does not repeat in his Reply, the  
3 Court sees no support in the record that Defendant met the criteria for Safety Valve,  
4 which include a requirement that Defendant did not possess a firearm in connection  
5 with the offense, played a minor role in the crime, and participated in a debrief. *See*  
6 18 U.S.C. § 3553(f)(1)-(5).

7 Remaining 3553(a) Considerations

8 The Court agrees with the Government that the seriousness of Defendant's  
9 conduct and his leadership role in the instant offenses, involving drug distribution  
10 and firearms, heavily weigh against shortening Defendant's term of incarceration. In  
11 addition, even factoring in credit for time served, Defendant is not due to be released  
12 until 2031, and, therefore, has not yet served even a half of his term. Prior terms of  
13 incarceration in Defendant's lengthy criminal history did not effectively deter  
14 Defendant's criminal conduct, favoring the full term imposed on the instant  
15 convictions. *See* 18 U.S.C. § 3553(a)(1) (considering the "history and  
16 characteristics of the defendant") and (a)(2)(B) (considering the need "to afford  
17 adequate deterrence to criminal conduct").

18 Furthermore, while the Court commends Defendant for acknowledging that  
19 his criminal acts have harmed third parties and the community, the Court finds no  
20 tangible demonstration in Defendant's submissions that he has rehabilitated himself  
21 to the extent that he no longer poses a risk of danger to the public. *See* ECF No. 813

1 at 9–10. Consequently, the Court finds that the sentence imposed is needed “to  
2 protect the public from further crimes of the defendant.” 18 U.S.C. § 3553(a)(2)(C).

3 Having considered Defendant’s renewed request for release pursuant to 18  
4 U.S.C. § 3582(c)(1)(A), as well as the non-binding factors provided by USSG §  
5 1B1.13, the Court finds that Defendant has not demonstrated extraordinary and  
6 compelling circumstances to warrant compassionate release. Nor do the factors  
7 under 18 U.S.C. §3553(a) support release. Accordingly, **IT IS HEREBY**  
8 **ORDERED** that Defendant’s Construed, Post-Remand Motion for Compassionate  
9 Release, **ECF No. 771**, is **DENIED**.

10 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this Order  
11 and provide copies to counsel, Mr. Youker at his address at FCI-Englewood, and the  
12 U.S. Probation Office.

13 **DATED** May 5, 2022.

14  
15 *s/ Rosanna Malouf Peterson*  
16 ROSANNA MALOUF PETERSON  
17 Senior United States District Judge  
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